pmw/skn

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.222 OF 2018
IN
NOTICE OF MOTION NO.542 OF 2014
IN
SUIT NO.203 OF 2014

Rajul Manoj Shah ... Appellant
Vs.
Navin Umarshi Shah & Ors. ... Respondents

Mr.Ashish Kamat with Mr.Kunal Mehta, Ms. J. Gogri i/b. Negandhi Shah & Himayatullah for the appellant.

Ms.Dipti Panda with Mr.N.Ramchandran and Ms.Tejjas P.Shah i/b. Narayanan & Narayanan for the respondent No.4.

Mr.Arshil Shah & Ms.Priti Gada and Ms.Sneha Agicha i/b. Sudhir Shah & Associates for the respondent Nos.9 and 10.

CORAM : A.S.OKA AND M.S. SONAK, JJ.

DATE : 16th & 17th OCTOBER 2018.

ORAL JUDGMENT : (Per A.S.Oka, J.)

Submissions were heard on the last date. By this appeal, the appellant– plaintiff has impugned the order dated 1st February 2018 passed by the learned Single Judge in Notice of Motion No.542/2014 in Suit No.203/2014. The present plaintiff filed a suit for administration of the estate of her late mother, father, brother and sister-in-law (Nandini) on the footing that all of them died intestate and that she is the sole heir and beneficiary of their estate. In this appeal, the controversy is very limited. The controversy is in respect of fixed deposits held in the name of Late Nandini who was the wife of the plaintiff's only brother. During her lifetime, late Nandini appointed the defendant Nos.4, 14 and 15 as her nominees of the fixed deposits held by her. The defendant No.4 was appointed as the nominee in respect of a fixed deposit in the sum of Rs.15 lakh. The defendant No.14 was appointed as a nominee in relation to fixed deposits in the sum of Rs.20,28,958.08 and the defendant No.15 was appointed as nominee in respect of fixed deposits in the sum of Rs.21,67,262.38.

2. The present suit was filed on 5th February 2014. By the time the suit was filed, the aforesaid defendants acting upon the nominations had withdrawn the amounts of fixed deposits and the interest accrued thereon. We may note here that according to the case of plaintiff, this Court granted letters of administration to her in respect of the estate of Late Nandini.

3. In the Notice of Motion No.542 of 2014, various prayers for interim relief were made. In this appeal, we are concerned with the prayer clause (c) which reads thus :-

> "(c) That pending the hearing and final disposal of the suit Defendant Nos.4, 14, and 15 be directed to deposit with this Hon'ble Court the amounts received by them from Defendant Nos.6 and 8 along with interest and/or benefits derived by Defendant Nos.4, 14 and 15."

4. The defendant Nos.6 and 8 are the banks with whom the fixed deposits were standing in the name of late Nandini. We may note here that in the impugned order, the learned single Judge has recorded that the learned counsel appearing for the plaintiff pressed only prayer (c) read with prayers (o) and (g). Prayer (o) again relates to the fixed deposit

amounts. By the impugned order, so far as the defendant Nos.4, 14 and 15 are concerned, the notice of motion was disposed of. However, notice of motion was kept pending as regards the other defendants as the Court was hearing the preliminary issue of jurisdiction. By the impugned order, by consent of parties, the names of defendant Nos.5, 7, 9, 11 and 13 were ordered to be deleted.

5. The grievance in this appeal made by the plaintiff is in respect of that part of impugned order by which the notice of motion was disposed of as against the defendant Nos.4, 14 and 15 without granting any interim relief against them. The learned single Judge, in paragraph-8 of the impugned order held that the defendant Nos.4, 14 and 15 were admittedly nominees in respect of the fixed deposits in question. He observed that the fixed deposits amounts were transferred to the said defendants before filing of the suit or prior to issuance of letters of administration of the estate of deceased Nandini in favour of the plaintiff. Therefore, the learned single Judge proceeded to observe that the plaintiff's claim against the so-called inter-meddlers merely sounds in money and the relief sought is really in the nature of an attachment before judgment. The learned single Judge observed that there is no plea made in support of a case for passing an order of attachment before judgment in accordance with Rule 5 of Order XXXVIII of the Civil Procedure Code (for short “the said Code”).

6. The learned single Judge further observed that it is not the plaintiff's case that she has satisfied the requirements laid down in Rule 5 of Order XXXVIII which is a condition precedent for passing an order of attachment before judgment. In fact, in paragraph-9, the learned single Judge observed that the notice of motion does not consist of a case under Rule 5 of Order XXXVIII of the said Code. The learned single Judge also

observed that if the said three defendants are held to be trustees in respect of these amounts, they will have to account for the same.

7. Before we make a reference to the submissions made across the bar, we may note that the defendant No.4 has tendered his affidavit of today's date. The said affidavit contains the undertaking of the defendant No.4 in paragraph-3. The affidavit is taken on record and marked as "U1" for identification. Paragraph-3 of the undertaking reads thus:

> "3. I say that without prejudice to my contention that the amount of the aforesaid Fixed Deposit of Rs.15,00,000/- (Rupees fifteen lakhs only) does not form part of the Estate of the Deceased Smt Nandini Hasmukh Sheth and belongs entirely to me, I hereby unconditionally undertake to this Hon'ble Court to crate a fresh Fixed Deposit of Rs.15,00,000/- (Rupees fifteen lakhs only) with a Scheduled Bank with instructions for Auto Renewal and thereafter deposit the Receipt in respect of such Fixed Deposit with the Registrar (O.S.)/ Prothonotary & Senior Master, High Court, Bombay on or before 23rd November 2018. I further undertake to this Hon'ble Court to keep the said Fixed Deposit renewed, valid and subsisting till such time as further Orders are not passed in respect of the said Fixed Deposit by this Hon'ble Court in the pending Suit No.203 of 2014."

8. The learned counsel appearing for the plaintiff has taken us through the pleadings and, in particular the averments made in the affidavit in support of the notice of motion on which the impugned order has been passed. He submitted that the plaintiff never intended to pray for relief of attachment before judgment. He submitted that on the conjoint reading of the prayers in the notice of motion and affidavit-in-support, it is apparent that the prayers made by the plaintiff were for invoking powers of the Court under Rule 10 of Order XXXIX of the said Code. He submitted that the fact that defendant Nos.4, 14 and 15 withdrew the fixed deposit amounts on the basis of their nominations is

not disputed and therefore, they were holding the money covered by the fixed deposits as trustees for the persons who are entitled to the amounts payable under fixed deposits. He would submit that on facts, that Rule 10 of Order XXXIX of the said Code is squarely applicable. He also invited our attention to the submissions of the learned counsel appearing for the plaintiff recorded in paragraph-6 of the impugned order. He invited our attention to the stand taken in the affidavit-in-reply filed by the defendant No.4. He pointed out the averments made in paragraph-7 onwards of the affidavit-in-reply. He pointed out that though in the subsequent affidavit, the defendant No.4 has made a departure from the stand taken, in paragraph-11 of the affidavit, he has categorically accepted that he has taken money payable under the fixed deposit from HDFC Bank in his capacity as a nominee. He also pointed out the stand taken in the said affidavit by the defendant No.4 that he had spent a huge amount from his pocket for taking care of the deceased and her needs. He, thereafter, invited our attention to the affidavit subsequently filed and the shift in the stand taken by the defendant No.4. He also invited our attention to the stand taken by the defendant No.4 in the affidavit-in-reply filed by him to the notice of motion taken out in the present appeal. He invited our attention to the averments made in paragraph-6 onwards of the said affidavit. He pointed out that the defendant No.4 claimed that he had rendered selfless service to the deceased who, in turn, expressed her desire to transfer certain shares held by her to his wife and to pay certain moneys to him. He pointed out the assertions made in paragraph-7 where it is claimed that he facilitated opening of a Demat Account with himself as joint holder wherein the deceased transferred the shares. He claimed that the deceased as a gesture of love and affection towards the defendant No.4 and his wife, transferred certain further shares of the company.

9. The learned counsel appearing for the plaintiff pointed out that in paragraph-8, a stand is taken that a joint account is opened by the said defendant with the plaintiff. He pointed out that now a completely different stand has been taken by the defendant No.4 by filing a reply to the notice of motion in appeal thereby suggesting that it was his money which was brought to the joint account and subsequently invested in the fixed deposit. In short, the stand taken is that the money deposited in the fixed deposits did not belong to the deceased. He, therefore, submitted that such an inconsistent stand could not have been taken by the defendant No.4. He pointed out that the defendant Nos.14 and 15 have accepted that they have withdrawn the money payable under the fixed deposits in their fiduciary capacity as a nominee of the deceased. Inviting our attention to the prayers made in the notice of motion and averments made in the plaint and affidavit in support, he submitted that in substance the prayer was under Rule 10 of Order XXXIX of the said Code. The learned counsel appearing for the appellant- plaintiff placed reliance on a decision of a Division Bench of this Court in the case of ***Jai Container Services Co. Pvt.Ltd. v. S.D.S. Shipping Pvt.Ltd. and others***[1]. He also relied upon the decision of the Division Bench of the Kerala High Court in the case of **P.L.Shaju v, Anitha**[2].

10. As far as the defendant No.4 is concerned, the submission of his learned counsel is that the impugned order shows that in substance the prayer canvassed before the learned single Judge was for attachment before judgment. She pointed out the averments made in the affidavit-in-reply filed to notice of motion, the documents produced as well as the affidavit-in-reply filed to the notice of motion in appeal. She submitted that there is a material on record to show that the money invested in the

1 2003 (3) Bom CR 163
2 2014 SCC OnLine Ker 26219

fixed deposits did not belong to the deceased and, in fact, the defendant No.4 had title to the same. She submitted that as Rule 10 of Order XXXIX was never pressed into service, now in appeal, the plaintiff cannot seek the relief in terms of the said provision. She relied upon the decision of the learned single Judge of Delhi High Court in ***Harish Ramchandani v. Manu Ramchandani and others***[3]. She submitted that proof of a very high standard is required for invoking Rule 10 of Order XXXIX of the said Code. She pointed out what is held by the Delhi High Court in paragraph-7 of the said decision and submitted that the standard rightly applied by the Delhi High Court is a standard of an admission which warrants passing of a decree on admission under Rule 6 of Order XII of the said Code. She submitted that the decision of the Division Bench in the case of ***Jay Container Services Co.Pvt.Ltd.*** (supra) will have no application. We may note here that as pointed out earlier, after the conclusion of hearing, the learned counsel appearing for the defendant No.4 has tendered an undertaking of the defendant No.4 (which is taken on record and marked as "U-1"). We have already referred to the contents of the said undertaking which is given without prejudice to the rights and contentions of the defendant No.4 in the pending suit.

11. The learned counsel appearing for the defendant Nos.14 and 15, apart from adopting the legal submissions made by the learned counsel appearing for the defendant No.4 urged that paragraphs-8 and 9 of the impugned judgment and earlier paragraphs will clearly show that the relief under Rule 5 of Order XXXVIII was sought and reasons have been assigned by the learned single Judge for rejecting the said relief. He submitted that whether the moneys were received by the said two defendants in the capacity of trustees is an issue which will have to be

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3 2001 SCC OnLine Del 407

decided at the time of trial. Relying upon the phraseology used in Rule 10 of Order XXXIX, he submitted that firstly, the fixed deposits were encashed by the said two defendants before the institution of the suit. Secondly, it is not established that the moneys withdrawn from the fixed deposits are held by the said two defendants as trustees. He would, therefore, submit that the learned single Judge rightly declined to pass a drastic interim order directing the concerned defendants to bring back the money and, therefore, no interference is called for with the impugned order which is of a discretionary nature. He pointed out that the concerned three defendants have already given an undertaking to bring back the amounts withdrawn, if the plaintiff succeeds in the suit. The learned counsel appearing for the plaintiff pointed out that the documents on record clearly show that the amounts have been withdrawn by the said defendants in their capacity as nominees. He specifically pointed out the documents in the form of letters addressed by the defendant Nos.14 and 15 to the Bank of India.

12. We have given careful consideration to the submissions. Firstly, we must refer to the factual aspects of the case including the averments made in the plaint. In this notice of motion, we are concerned with the fixed deposits admittedly made in the name of the deceased Nandini. As narrated in the plaint, the plaintiff is the daughter of Rasiklal. Her father and mother died intestate on 27th December 1966 and 1st October 1990 respectively. Her only sibling (her brother) died intestate on 31st July 1995. His brother's wife is deceased Nandini who died intestate on 12th October 2013. Paragraph-8 of the impugned order notes that Letters of Administration of the estate of the deceased Nandini have been granted to the plaintiff after the amounts were withdrawn by the defendant Nos.4, 14 and 15. As far as the defendant No.4 is concerned, he is not related to the family of the plaintiff. The defendant

No.14 is Nandini's sister's daughter and the defendant No.15 is Nandini's son's wife. The admitted position is that none of the defendant Nos.4, 14 and 15 are claiming to be the legal representatives of the deceased Nandini. As regards the fixed deposits of the deceased Nandini, there are specific averments made in the plaint. It is the specific case made out in the plaint that the said three defendants were nominees of the fixed deposits standing in the name of deceased Nandini. At this stage, we may also note the specific prayer made in the plaint. There is a relief sought in the plaint as regards the fixed deposit amounts withdrawn by the defendant Nos.4, 14 and 15 in their capacity as the nominees of the deceased. There are two application forms signed by the defendant Nos.14 and 15 addressed to the Branch Manager of the Bank of India, Maheshwari Udyan Branch which specifically refer to the particulars of the fixed deposits described in the name of the deceased Nandini. Both of them have accepted in writing in the said letters that they are registered nominees of the fixed deposits and that they are receiving the payments as trustees on behalf of the legal heirs of the deceased Nandini. There is a letter dated 1st November 2013 addressed to the defendant No.4 by the Branch Manager of the HDFC Bank having branch office at Matunga, Mumbai in which it is clearly mentioned that the defendant No.4 was a nominee of the deceased Nandini in respect of the subject fixed deposit.

13. In any case, admittedly, the fixed deposit amounts received by the defendant Nos.4, 14 and 15 from the respective banks are only on the basis of nominations registered by the deceased Nandini in their respective names. It is well settled that when such a nominee takes the amount of the fixed deposit held by the deceased holder of fixed deposits, he or she takes the same on behalf of the legal representatives of the deceased who are entitled to receive the said amount. The nominee

receives the same in fiduciary capacity as a trustee of those who are legally entitled to receive it.

14. Now, coming to the prayers made in the notice of motion on which the impugned order has been passed, as regards the fixed deposits amount, there are specific prayers in prayer clauses (b) and (c). The defendant No.6 and defendant No.8 are the banks with whom the fixed deposits were made by the deceased Nandini in respect of which the aforesaid three defendants were nominees. Prayer (c), as quoted above, is for directing the said defendants to deposit in the Court the amounts received by them from the banks together with accrued benefits thereon.

15. Rule 10 of Order XXXIX of the said Code reads thus:

> "ORDER XXXIX: TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS
> *Temporary injunctions*
> ….. ….. ….. ….. ….. ….. ….. ….. …..
>
> **10. Deposit of money, etc. in Court.-** Where the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court."

Perusal of the prayers made in the notice of motion and plaint clearly show that a prayer was made for deposit of the money withdrawn and held by the defendant Nos.4, 14 and 15. There was no prayer made for attachment before the judgment as provided in Order XXXVIII of the said Code. The prayer was for directing the concerned defendants to deposit the amounts in the Court and not for the attachment of the money in the hands of the said defendants before judgment.

16. Therefore, we have no manner of doubt that what was invoked by the plaintiff was the provision of Rule 10 of Order XXXIX. Now, we turn to the decision of this Court in the case of ***Jay Container Services Co.Pvt.Ltd.*** (supra). In paragraph-12 of the said judgment, the Division Bench of this Court held thus:

> "12. Accordingly, we allow this appeal and set aside the order passed by the learned Single Judge and grant the motion in terms of prayer (a) only to the extent of deposit and not for the purpose of withdrawal. As far as prayer (b) is concerned, Mr. Rambhadran submits that this claim is also on the basis of the breach of contract whereas Mr. Kapadia relies upon the decision of Apex Court in (Union of India v. Roman Iron Foundry) reported in A.I.R. 1974 S.C. 1265 on Sections 73 and 74 of the Contract Act and submits that the future monthly rentals are not presently due and the appellants will have to establish the claim by way of damages and until that is done, relief in prayer (b) cannot be granted. In our view, the submission is well taken. We have extended the principle under Order 39, Rule 10 of Civil Procedure Code with the help of Section 151 of Civil Procedure Code on the footing that the appellants have claimed the arrears of monthly rentals, that there is hardly any defence disclosed and prima facie "the money is due" to the appellants. Therefore we have directed deposit of the arrears of monthly rentals as prayed in prayer (a). As far as prayer (b) is concerned, it is not possible to extend the same proposition by invoking section 151 of the Civil Procedure Code, since the claim is for amounts that would become due per month in future. It cannot be said to be a claim for money due and presently payable. Therefore, prayer (b) is not accepted."

Another decision relied upon by the plaintiff was the decision of the Division Bench of the Kerala High Court.

17. The learned counsel appearing for the defendant No.4 relied upon the decision of Judicial Commission in the case of ***Devsi Narain***

Patel v. Hassanand and another[4]. Paragraph-14 of the said decision reads thus:

> "But the application is also based on O. 39, R. 10 of the CPC. I do not, however, think that the plaintiff in the circumstances referred to above is entitled to get under the provisions of O 39, R. 10 of the CPC what he cannot secure under the provisions of O. 12, R. 6 of the CPC. Obviously the same principle with regard to a clear and unambiguous admission of money recoverable by the plaintiff from the defendant in the action in question governs O. 39, R. 10, as it governs O. 12, R. 6 of the CPC. And, in my opinion, an admission insufficient for an order under O. 12, R. 6 of the CPC is also, insufficient for an order under O. 39, R. 10 of the CPC. The scope of O. 39, R. 10 of the CPC is admittedly less wide than that of O. 12, R. 6 of the CPC for it is confined to an: admission contained in the pleadings. For these reasons, I dismiss the application of the plaintiff, but make no order as to costs."
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> (Underline supplied)

The learned single Judge of the Delhi High Court (as he then was) followed the aforesaid decision of the Judicial Commissioner and in paragraph-7 of his decision in the case of ***Harish Ramchandani v. Manu Ramchandani and others*** (supra) held thus:

> "7. This rule would be applicable only when there is admission on the part of the defendants of the nature which would constitute sufficient admission under Order XII Rule 6, CPC. Rule 10 of Order XXXIX does not apply unless-
>
> (A) The admission of the party is an admission sufficient under 0order 12 Rule 6 AIR 1927 Sind 25 (27).
>
> (B) The party making the admission "holds" the property or other things capable of deliver (1903) 27 Mad 168 (172)(SB)."
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> (Underlines supplied)

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4 1926 SCC OnLine Sind JC 56: AIR 1927 Sind 25

The argument which was accepted was that Rule 10 of Order XXXIX does not apply unless the admission of the party is an admission sufficient to attract Rule 6 of Order XII of the said Code.

18. Considering the scheme of Rule 10 of Order XXXIX, we find it difficult to accept the Delhi view as correct. On its plain reading, Rule 10 is applicable when subject matter of the suit is money or some other thing capable of delivery. An order of deposit can be made provided the party to the suit admits that he holds such money or thing as a trustee of other party. The order of deposit can be passed when the party admits that the money or the thing held by the party belongs to the other party or the money is due to the other party. Rule 6 of Order XII is a discretionary provision which empowers the Court to pass a judgment on admission made either in the pleadings or otherwise, whether orally or in writing. Therefore, in a suit where there is a clear admission of a fact which enables the Court to pronounce a judgment on admission, the Court may in its discretion pronounce the judgment on admission and thereafter in terms of sub-rule (2) of Rule 6 of Order XII, the Court is under a mandate to make a decree on admission. Thus, if in a given case, there is a clinching admission by a defendant that he is holding the money or some other thing capable of delivery as a trustee for the plaintiff and the Court is satisfied that it is a fit case to exercise discretion by passing a judgment on admission under Rule 6 of Order XII, the Court would very well pass a judgment on admission so that by executing the decree drawn in terms of the said judgment, the plaintiff gets the money or the thing capable of delivery. If such a stringent test is to be applied for applicability of Rule 10 of Order XXXIX, the provision of Rule 10 will virtually become redundant. Rule 10 confers powers on the Court to pass

an interim order directing the money to be deposited in the Court or to be delivered to the party for whose benefit the concerned party is holding the same as a trustee. There is a power vesting in the Court to direct the party to deposit property ordered to be delivered or to furnish a security. The power under Rule 10 of Order XXXIX is a power to pass an interim order pending suit. But the power under Rule 6 of Order XII is a drastic power of passing a decree on admission without conducting trial. The standards applicable to a provision conferring power to pass a decree on admission cannot be applied to Rule 10 of Order XXXIX which empowers the Court to pass an interim order. Therefore, in our view, the test applicable for passing the judgment on admission under Rule 6 of Order XII of the said Code cannot be imported in Rule 10 of Order XXXIX. If the conditions provided in Rule 10 of Order XXXIX are satisfied, the Court can exercise the power under Rule 10 by directing the payment of money to the party for whose benefit the same is being held as a trustee or to direct deposit of the money in the Court.

19. In the present case, it is undisputed that the money payable under the fixed deposits standing in the name of the deceased Nandini was withdrawn by the aforesaid three defendants only on the basis of the nominations made by the deceased. As nominees, the said defendants were holding the moneys payable under the fixed deposits as trustees in the fiduciary capacity for the benefit of the legal representatives of the deceased Nandini. None of them are claiming to be the legal representatives of the deceased. The concerned Banks have admittedly allowed withdrawal of the amounts payable under the fixed deposits only on the basis of nominations made by the deceased. In fact, the defendant Nos.14 and 15 have addressed letters to the Bank stating that they are receiving the payments as the trustees of the legal representatives of Nandini. Even by the defendant No.4, the withdrawal is admittedly in a

capacity as the nominee and, therefore, as a trustee. Therefore, Rule 10 of Order XXXIX was clearly attracted. The plaintiff is holding Letters of Administration in respect of the estate of the deceased Nandini.

20. As far as the defendant No.4 is concerned, without prejudice to the contentions raised by the said defendant in the suit, an undertaking as aforesaid has been given to create a fixed deposit of a sum of Rs.15 lakh with a scheduled bank with instructions for auto renewal and thereafter deposit the fixed deposit receipts with the registry of this Court on or before 23rd November 2018. The learned counsel appearing for the plaintiff submits that the defendant No.4 enjoyed interest on the fixed deposit amount of Rs.15 lakh. The power of the Court under Rule 10 of Order XXXIX is a discretionary power. The entire principal amount withdrawn by the defendant No.4 is agreed to be secured by the said defendant by creating a fixed deposit thereof. The undertaking given by the defendant No.4 ensures that the said principal amount remains intact in the Court till the disposal of the suit as also the interest accrued on the said amount. If the plaintiff succeeds, appropriate direction can always be issued by the Court while passing the decree. If ultimately the plaintiff fails as far as the decree sought against the defendant No.4 is concerned, the said defendant can take back the said fixed deposit amount with interest accrued thereon.

21. In view of the undertaking given by the defendant No.4, it is not necessary to pass any order against the defendant No.4. The undertaking sufficiently secures the interests of both the plaintiff and the defendant No.4. The Court can, in a fit case, grant a lesser relief that what could be granted under Rule 10 of Order XXXIX though a case is made out under the said provision.

22. As regards the defendant Nos.14 and 15, there is no defence raised by them that they were the owner of the amounts covered by the fixed deposits. In fact, the application forms duly filled in by them and addressed to the Bank Manager clearly show that they have taken the amount as trustees for the benefit of the legal representatives of the fixed deposit holder- Nandini. Therefore, there is every justification to issue the directions to the said defendants to bring back the amounts withdrawn by them to the Court. As stated earlier, the said defendants are not claiming to be the legal representatives or the legal heirs of the deceased Nandini. We, therefore, propose to direct the defendant Nos.14 and 15 to create fixed deposits of the entire amounts withdrawn by them as nominees with a scheduled bank and deposit the receipts thereof with the registry of this Court as offered to be done by the defendant No.4. Such a direction will meet the ends of justice. On one hand, the money withdrawn by the said defendants will be secured and interest will accrue on the same and, on the other hand, the plaintiff will not be able to get the said money unless she succeeds in the suit.

23. Hence, we pass the following order:

(i) The impugned judgment and order dated 1st February 2018 is modified only to the extent to which the relief is claimed as against the defendant Nos.4, 14 and 15;

(ii) We accept the undertaking of the defendant No.4 dated 16th October 2018 which is taken on record and marked as “U-1” for identification and, especially, the undertaking in paragraph-3 thereof. As the defendant No.4 is duty bound to comply with the undertaking given by him, we are not passing any specific direction against the defendant No.4, except for directing him to comply with the undertaking within a period of two weeks from the date on which this judgment is uploaded;

(iii) We direct the Prothonotary and Senior Master to accept the original Fixed Deposit Receipts in the sum of Rs.15 lakh as and when tendered by the defendant No.4 and to keep the same in a safe custody. The Prothonotary and Senior Master shall ensure that reminders are issued to the defendant No.4 to get the fixed deposits renewed and keep it valid and subsisting till the disposal of the suit. As soon as the fixed deposit receipts are deposited by the defendant No.4 with the learned Prothonotary and Senior Master, he shall address a letter to the bank in which the fixed deposits are made calling upon the bank to ensure that the defendant No.4 does not encash the fixed deposits without specific orders of this Court;

(iv) We direct the defendant Nos.14 and 15 to create fixed deposits in the sum of Rs.20,28,988.08 and Rs.21,67,262.38 respectively with any scheduled bank and deposit the original receipts of the same with the learned Prothonotary and Senior Master within a period of six weeks from the date this judgment is uploaded on the server. We direct the defendant Nos.14 and 15 that they shall not encash the fixed deposits without the permission of the Court and that they shall renew the fixed deposits from time to time and keep it valid and subsisting till the disposal of the suit;

(v) As and when the defendant Nos.14 and 15 tender the fixed deposit receipts, the registry will accept the same and shall keep the same in a safe custody of the Prothonotary and Senior Master. As soon as the fixed deposits receipts are received by the registry, the Prothonotary and Senior Master shall address a letter to the concerned bank calling upon the bank not to allow encashment of the said fixed deposits without prior permission of the Court. The Prothonotary and Senior Master shall ensure that the defendant Nos.14 and 15 are called upon to renew the fixed deposits from time to time;

(vi) We make it clear that the learned single Judge while disposing of the suit shall be entitled to pass appropriate orders regarding the fixed deposits and interest accrued thereon;

(vii) We make it clear that all defences of the concerned defendants will remain open at the time of final hearing of the suit;

(viii) We reiterate that the impugned order stands modified only so far as relief claimed in the notice of motion against the defendant Nos.4, 14 and 15 is concerned and the rest of the impugned order is not disturbed;

(ix) Time to carry out amendment as permitted by the learned single Judge is extended by a period of two weeks from the date this judgment and order is uploaded on the server;

(x) The appeal is partly allowed on the above terms;

(xi) Pending notices of motion, if any, do not survive and stand disposed of accordingly.

(M.S. SONAK, J.) (A.S.OKA, J.)